

IMPROVING ACCESS TO HEALTH CARE FOR NEVADA'S UNDERSERVED POPULATIONS:

CONRAD STATE 30 / J-1 VISA WAIVER and NATIONAL INTEREST WAIVER PROGRAMS

OVERVIEW

Many communities throughout the U.S., both urban and rural, experience difficulties attracting physicians, especially for primary care. To address the issue, states and federal agencies have utilized foreign physicians who have just completed graduate medical education in the U.S. under J-1 visas. Ordinarily, these physicians must return home after completing their programs. However, this requirement can be waived at the request of a state or federal agency if the physician agrees to practice in an underserved area. In 1996, the U.S. General Accountability Office (GAO) reported that J-1 visa waivers had become a major source of physicians for underserved areas, a trend that continues today.

CONRAD STATE 30 / J-1 VISA WAIVER

The Conrad State 30 program was initiated in October 1994, and was designed to provide each of the fifty U.S. states up to 20 waivers for physicians each federal fiscal year. In 2003, the number of maximum waivers was increased to 30. Each state has been given some flexibility to implement its own guidelines, although there are some basic requirements that are common to all Conrad State 30 programs. For physicians who qualify, the Conrad State 30 program is an excellent method of obtaining a waiver.

While the exact requirements vary from state to state, the following are generally required:

1. A full-time offer of employment (40 hours per week) as a primary care physician in a health professional shortage area or medically underserved area in a particular state;
2. A letter of support from the particular State Director of Health supporting the physician's Conrad State 30 request;
3. A "no-objection" letter from the foreign physician's home country, if needed; and
4. A three-year employment contract.

Physicians participating in graduate medical education on J-1 visas are required to return to their home country or country of last legal residence for at least 2 years before they may apply for an immigrant visa, permanent residence, or certain nonimmigrant work visas. They may, however, obtain a waiver of this requirement from the Department of Homeland Security at the request of a state or federal agency, if they have agreed to practice in an underserved area for at least 3 years. Once the physician is granted the waiver, the employer petitions Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) for the physician to obtain H-1B status (a

nonimmigrant classification used by foreign nationals employed temporarily in a specialty occupation).

Obtaining a J-1 visa waiver at the request of a state or federal agency to practice in an underserved area involves multiple steps, which may take up to 18 months to complete. A physician must submit an application to obtain a case number from the Department of State and must secure a bona fide offer of employment from a health care facility that is located in an underserved area or, in the case of flexible waivers, from a health care facility that treats residents of an underserved area. The physician, the prospective employer, or both apply to a state or federal agency to request a waiver on the physician's behalf. If, after reviewing the application, the state or federal agency decides to request a waiver, the state or federal agency submits a letter of request to the Department of State affirming that it is in the public interest for the physician to remain in the United States. If the Department of State decides to recommend the waiver, it forwards its recommendation to the USCIS, who is then responsible for making the final determination and notifying the physician when the waiver is granted. According to officials involved in recommending and approving waivers at the Department of State and USCIS, after a review for compliance with statutory requirements and security issues, nearly all waiver requests are recommended and granted.

The physician must work at the facility specified in the waiver application for a minimum of 3 years, unless the physician obtains approval from USCIS to transfer to another facility. USCIS considers transfer requests only in extenuating circumstances, such as closure of the physician's assigned facility. Once the physician fulfills the employment contract, the physician may apply for permanent residence, continued H-1B status, or other nonimmigrant status, if the physician wishes to remain in the United States.

NATIONAL INTEREST WAIVER

As part of the J-1 Visa Waiver program, the foreign physician cannot obtain permanent residence status (obtain a "green card") from the USCIS until after fulfilling his/her three-year commitment. However, the employer may start the process in stages. There are two options for the immigrant visa process: the Labor Certification or the National Interest Waiver (NIW).

The National Interest Waiver (NIW) also seeks to address the problem of physician shortages in designated shortage areas by relieving the petitioner from fulfilling the U.S. Labor Certification requirements, set by the U.S. Department of Labor, which allows the physician to get permanent U.S. residence sooner. The amendment is applicable only to practicing licensed physicians (allopathic and osteopathic) and requires a letter from a state department of health with central authority for oversight of where the physician is actually practicing. The national interest waiver for physicians in underserved areas relieves the petitioner only from the labor certification process, and the individual must still meet all eligibility requirements for this immigrant classification in order to be eligible for the NIW. There is no limit on the number of NIW applicants a state may recommend during a federal fiscal year.

The Labor Certification process requires the employer to initiate a recruitment period and place one journal ad. There is a risk to this process because if a qualified U.S. worker applies for the position, the labor certification application cannot be filed.

To bypass the labor certification process entirely, the USCIS will grant a NIW on behalf of any foreign physician who has met the following criteria:

1. The foreign physician agrees to work full-time in an area designated as having a shortage of healthcare professionals;
2. A state public health department has previously determined that the foreign physician's working in such an area was in the public interest; and
3. The foreign physician works full-time in such an area for an aggregate of five years before he or she is eligible to adjust status or obtain an immigrant visa under the waiver provision.

The advantage of the NIW is that no labor certification is required. The foreign physician, however, is obligated to work in the underserved area for a minimum of five years. Consequently, his/her visa would have to be extended beyond the initial three years. The NIW and the Application for Adjustment of Status to Permanent Residence may be submitted before the five-year period is completed. However, permanent residence may not be granted until the period of commitment ends in five years.

NEVADA CONRAD STATE 30 / J-1 VISA WAIVER and NIW PROGRAMS

The purpose of both the Nevada Conrad State 30 / J-1 Visa Waiver and National Interest Waiver programs is to improve access to health care in underserved areas of the state by increasing the number of physicians who will provide primary care to underserved populations. Currently, there are over 30 J-1 physicians serving their three year commitment in Nevada.

In the summer of 2008, the Nevada Primary Care Office (PCO) began an evaluation of the Conrad State 30 / J-1 Visa Waiver (J-1) and National Interest Waiver (NIW) programs in the following areas: the provision of care to Medicaid recipients, the factors involved in the recruitment and retention of physicians in underserved areas, and the performance of the PCO.

The program evaluation used three sources of data: demographic data collected routinely on the J-1/NIW physicians serving in Nevada, aggregate data from the Division of Health Care Financing and Policy regarding services provided to Medicaid clients, and the J-1/NIW survey data collected in the summer of 2008. Following are some of the areas that stood-out as successes when analyzing the performance of the PCO.

- Over 120 J-1 visa waiver physicians worked for Nevada sponsors in the past 8 years.
- 87% percent of J-1 visa waiver physicians completed their three years in Nevada.

- 65% of the J-1 visa waiver physicians continue working in Nevada for one year past their commitment.
- Over the last 7 years, J-1 visa waiver physicians have successfully increased access to care for the medically underserved populations of Nevada. An example of that success is: In North Las Vegas, the population to physician ratio is 1:5,765 without the J-1s included in the calculation; with the J-1s included in the calculation, the ratio is 1:3,459.
- Initial data from the Division of Health Care Finance and Policy revealed that a large number of Medicaid recipients receive services from J-1 visa waiver physicians. Data collection and analysis are still in process.

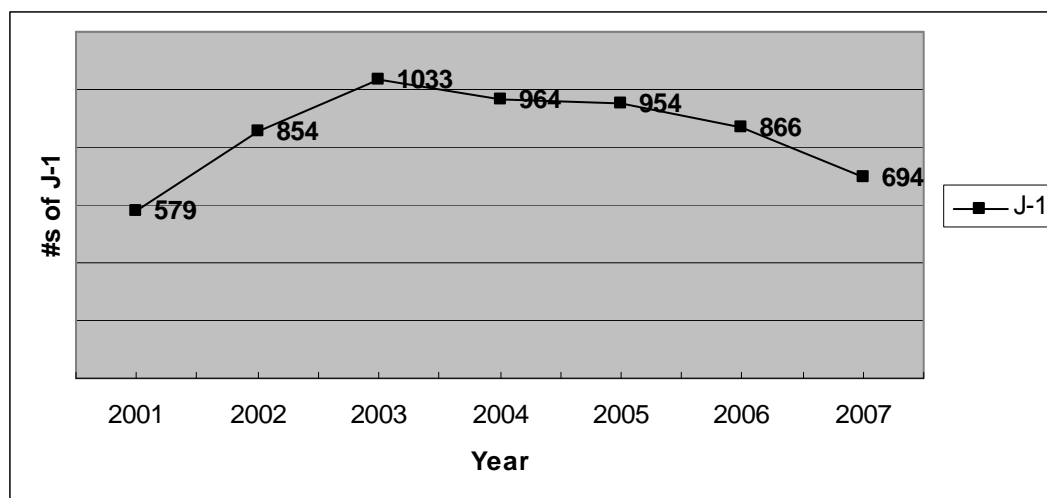
Table 1: Conrad State 30 / J-1 Visa Waivers in Nevada 2001-2008

2001	2002	2003	2004	2005	2006	2007	2008
20/20	20/20	27/30	18/30	13/30	11/30	9/30	9/30
100%	100%	90%	60%	43%	37%	30%	30%

The reasons are not clear regarding a 67% decline in J-1 physicians coming to Nevada since 2003. Following are some of the possible explanations:

- The number of physicians who conduct their residency training on J-1 Visas dropped nationwide from 11,600 in 1996 to 6,200 in 2004. Part of this decline, according to the GAO, is that more foreign-born medical students are coming to the U.S. on the less-restrictive H-1B visa, rather than the J-1 visa. The H-1B program does not require three years of service in a HPSA area.
- There has been a slow increase over the last seven years in the annual number of J-1 physicians placed by government agencies in a HPSA area. According to the statistics from the Primary Care Office in Texas, 579 J-1s were placed in 2001 and 694 were placed in 2007. There was a peak year of placement, 2003, with 1033 physicians placed in that year alone.

Table 2: J-1s nationwide 2001 – 2007



- Since the 9/11 catastrophe, the screening process for immigration has been more stringent.
- According to a 2006-07 investigation conducted by the *Las Vegas Sun*, the J-1 program in Nevada is avoided by some foreign physicians because they have heard stories of mistreatment by sponsors. In 2001 and 2002, there were six written complaints from J-1 physicians regarding Nevada sponsors not abiding by the terms of the contract. There was one complaint from a sponsor regarding the physician not abiding by the terms of the contract. Since 2002, the PCO has not received any written complaints from physicians regarding Nevada sponsors.
- There has been a decline in J-1s placed in several of the other states with populations similar to Nevada. However, two states, Arkansas and Iowa, have managed to attract nearly 30 J-1 physicians per year to their state. The PCO has contacted those particular states to elicit their strategy for recruitment and retention.

Table 3: Decline of J-1s among states with similar population

State	Pop.	2001	2002	2003	2004	2005	2006	2007
Arkansas	2,811,000	0	30	30	30	29	14	N/A
Iowa	2,982,000	20	30	30	30	28	29	N/A
Kansas	2,764,000	0	4	14	26	17	17	14
Mississippi	2,911,000	14	13	19	17	18	8	9
Nevada	2,496,000	20	30	27	18	13	11	4
Utah	2,550,000	18	17	4	6	5	4	1

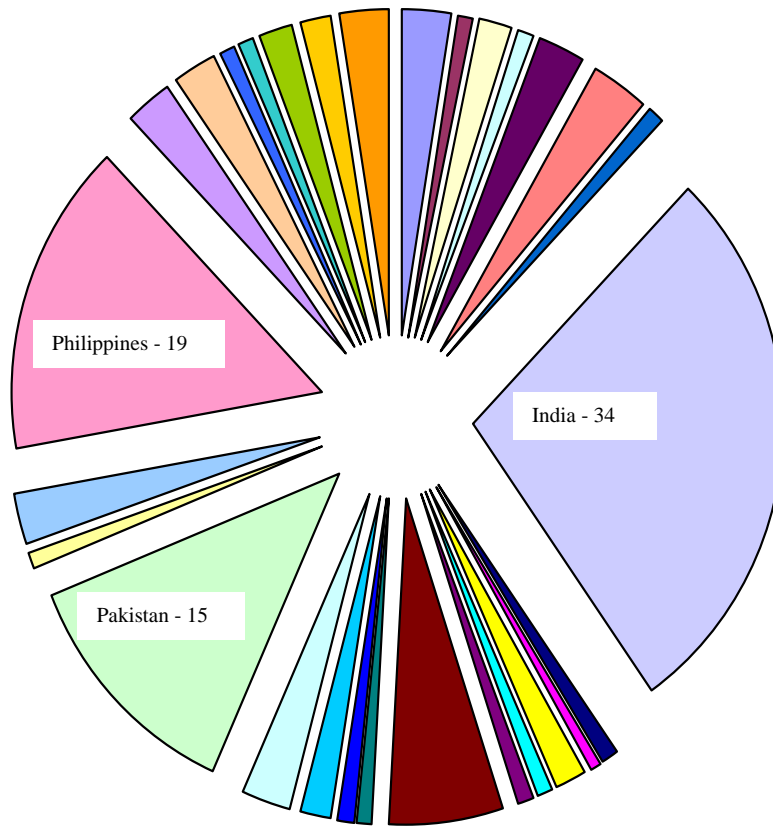
- States that have successfully placed all available J-1s each year since 2001: Arizona, California, Illinois, Kentucky, Massachusetts, Michigan, Missouri, North Carolina, Texas and Washington.

Chart 1 details the Country of Birth for Nevada J-1s placed between 2001-2008. Just over half of the waivers (55%) were granted to a combination of J-1 physicians from India, the Philippines and Pakistan. The remainder went to a combination from all over the globe.

Chart 2 provides information about the counties and towns where the J-1s have been placed during that same time period. Of the 122 physicians, 105 (86%) were in the southern part of the state, and 17 (14%) were placed in the north. This is consistent with the geographic location of the state's population and the federally designated HPSAs. Eighty-three (68%) of the J-1s were placed in the Las Vegas – North Las Vegas area.

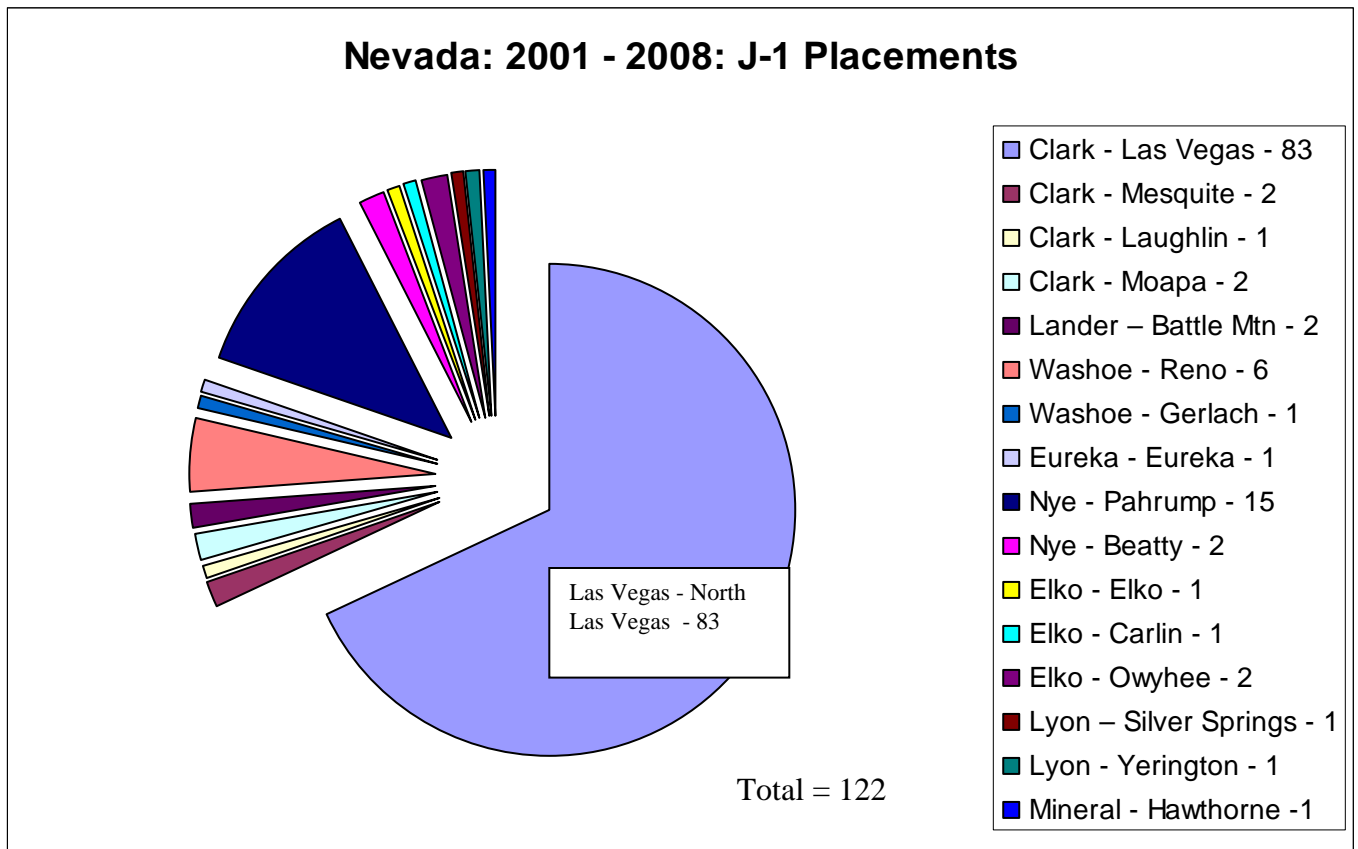
Chart 1: Country of Birth

Nevada: 2001 - 2008 J-1 Placements



- Bangladesh - 3
- Canada - 1
- Dominican Republic - 2
- Ecuador - 1
- Egypt - 3
- Ghana - 4
- Grenada - 1
- India - 34
- Iran - 1
- Ireland - 1
- Israel - 2
- Jordan - 1
- Kuwait - 1
- Lebanon - 7
- Libya - 1
- Malaysia - 1
- Mexico - 2
- Nigeria - 3
- Pakistan - 15
- Panama - 1
- Peru - 3
- Philippines - 19
- Romania - 3
- Syria - 3
- Tanzania - 1
- Thailand - 1
- Trinidad - 2
- Turkey - 2
- UK - 3

Chart 2: County and Towns in Nevada where J-1s were placed



RE-ENGINEERING OF NEVADA'S CONRAD STATE 30 PROGRAM

The *Las Vegas Sun* published an extensive investigation regarding mistreatment of Conrad State 30 / J-1 Visa Waiver physicians by their sponsors/employers, beginning in late September 2007. Health Division Administration realized that an important health care access program was in jeopardy, and developed a corrective action plan.

In mid-January 2008, the PCO, including the Conrad State 30 / J-1 Visa Waiver Program, was restored to the Health Division's Bureau of Health Statistics, Planning and Emergency Response and placed under a new program manager, as the critical first step in a comprehensive corrective action plan, which included hiring a new Manager for the Primary Care Office (May 2008). Currently, there are 1.25 FTEs dedicated to the Conrad State 30 Program, and funding is provided by a combination of federal grants and a small amount (less than 5%) of General Fund.

After performing a thorough program evaluation, areas requiring re-engineering were identified. There was a great need to establish a transparent process for approving J-1 Visa Waiver requests that ensured compliance with both the spirit and requirements of the Conrad State 30 Program and provided enhanced program oversight. The PCO

also was not accurately tracking the J-1s from the time of application through completion of their commitment. Annual site visits were not being done. The relationship with the State Board of Medical Examiners (BME) was minimal and ineffective.

The Health Division determined that to ensure a transparent process, it would be best to convene a panel of external subject matter experts, who could also provide some additional program oversight. In April 2008, the Health Division **Primary Care Advisory Council** held its first meeting, in accordance with Nevada Open Meeting Law, and adopted its bylaws during its June 2008 meeting. The Council is comprised of representatives from a variety of organizations and stakeholders in the private and public sector that have impact on the provision of primary and specialty care within Nevada, particularly in medically underserved areas. The recommendations of the Council are advisory only, to the Administrator of the Health Division, regarding: the Conrad State 30 program; primary care provider and specialty care provider recruitment and retention efforts; health care workforce development activities, efforts and initiatives; federal Health Professional Shortage Areas and Medically Underserved Areas/Populations designations analysis, impact and stratification; and other issues impacting access to primary care and health care workforce development.

The Council meets at least quarterly and the seven members are volunteers appointed by the Health Division Administrator for a term of two years. During calendar year 2008, the Council met five times and recommended approval of nine J-1 Visa Waiver applicants. Current Council members are:

Gabriel Bonnet, MD – Retired Pediatrician and former Medical Director for Renown Health, Reno, NV

Senator Maggie Carlton – Community Development Director, Great Basin Primary Care Association, Las Vegas, NV

Charles Duarte – Administrator, Nevada Division of Health Care Financing and Policy, Carson City, NV

Caroline Ford, MPH – *Vice Chairperson* and Assistant Dean/Director, Center for Education and Health Services Outreach, University of Nevada School of Medicine, Reno, NV

Carl Heard, MD – Chief Medical Officer, Nevada Health Centers, Inc., Carson City, NV

Lawrence P. Matheis – Executive Director, Nevada State Medical Association, Las Vegas, NV

Amir Z. Qureshi, MD – *Chairman*, Infectious Diseases Specialist and former J-1 Visa Waiver physician, Las Vegas, NV

The Council's formation has resulted in interesting outcomes. The first is an effective, collaborative relationship between the PCO and State Board of Medical Examiners. J-1 Visa Waiver applicant bottlenecks are being addressed and licenses are being issued in a timely manner. BME staff regularly attends Council meetings, and PCO staff

represent the Health Division at the quarterly BME meetings. The two agencies are working together on how to handle mistreatment complaints and prevent further abuse of the J-1s. Also, the two are working together to gather data, for better tracking of the all physicians, in order to meet various other related statutory and federal requirements. The PCO has drafted program policies and procedures, which have been vetted through an open meeting process, to ensure that the program is administered in a manner that is consistent and compliant with federal requirements. These policies and procedures are expected to be implemented by the end of state fiscal year 2009. Because the Council has found some of the program's federal requirements lack clarity, Senator Carlton is seeking legislation during the 2009 session to remedy this situation; as several other states have this type of legislation, including Oregon, Utah and Washington.

The PCO has developed and implemented a tracking system that allows it to monitor a J-1 physician from the time a waiver application is received through the completion of their waiver commitment. Both annual and ad hoc site visits are now being conducted and these have enhanced both program compliance and communication with the J-1s and their employers. The PCO has found that neither the J-1s nor the employers fully understood their rights and responsibilities, and an education/orientation program is in development. It is also expected to become an effective recruitment tool.

INTERIM LEGISLATIVE REPORTS

During the 2007-2008 interim and a result of the *Las Vegas Sun* investigative reports, two program reports were requested by the Legislative Committee on Health Care (October 2007 and February 2008) and one by the Legislative Committee on Health Care Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances (May 2008). While the members of both Committees were pleased with the program changes made, they will continue to monitor the situation until the problems have been resolved to their satisfaction.

SUMMARY

Nevada's Conrad State 30 / J-1 Visa Program is critical for improving access to health care for the those residents living in underserved areas. While sustainable, effective measures have been put into place to resolve key problems, the program has a long way to go toward rebuilding its credibility and reputation. The Health Division is committed to strengthening this program, as a means to better meet health care needs in the Silver State.